
In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)	
)	Chapter 11 Case
CRESCENT EQUIPMENT)	
COMPANY, INC.)	Number <u>93-20410</u>
)	
<i>Debtor</i>)	

MEMORANDUM AND ORDER
ON OBJECTION TO CONFIRMATION

This matter comes before the Court on the Objection of the Georgia Department of Revenue ("Department") to the confirmation of Debtor's Chapter 11 Plan of Reorganization. At the confirmation hearing held on June 13, 1994, it was revealed that all issues regarding the Department's objection had been resolved except the issue of the appropriate interest rate to be paid to the Department on its priority tax claim under 11 U.S.C. Section 1129(a)(9)(C). I took the matter under advisement and allowed the parties ten days to submit evidence on the appropriate interest rate to be paid to the Georgia Department of Revenue. Based upon the evidence submitted by the parties, the record in the file and applicable authorities, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

On June 30, 1993, Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code. On November 18, 1993, the Department filed a proof of claim in Debtor's case for unpaid trust-fund taxes. The proof, as amended on March 16, 1994, shows a total claim of \$86,781.78, of which \$73,177.77 is for taxes that are unsecured but entitled to priority status under section 507(a)(7) of the Code. Debtor filed its Disclosure Statement and Plan of Reorganization on February 11, 1994.

The Department filed its Objection to Debtor's Plan of Reorganization on May 23, 1994. The objection is based upon a number of grounds, including the Plan's failure to properly classify certain tax claims, the Plan's failure to meet the six-year time limitation and present value requirement of section 1129(a)(9)(C), the Plan's retention of jurisdiction in derogation of the Department's right to pursue legal remedies for Debtor's defaults under the Plan, the Plan's violation of the Tax Injunction Act, and the Plan's granting of relief to non-debtor parties. As previously noted, the only issue left unresolved after the hearing was the interest rate required to be paid to the Department on its unsecured priority tax claims in order to satisfy the present value requirement of section 1129(a)(9)(C). Debtor and the Department have agreed that these claims must be paid within a period of 48

months.

The Department contends that, under 1129(a)(9)(C), it is entitled to an interest rate on the deferred payments that is equal to a prevailing market rate for a loan that has a term equal to the 48-month payout period agreed to by the parties, with due consideration given to the quality of the security and the risk of subsequent default. Accordingly, the Department contends that the prime rate, which the parties' agree is equal to 7.25%, plus a risk premium of 2.5% is appropriate, yielding an annualized rate of 9.75%.

Debtor, on the other hand, argued at the hearing that the annualized T-bill rate, which is generally considered the benchmark for a "risk-free" interest rate, is the appropriate interest rate to pay the Department the present value of its claim. The current annual rate of return paid on a T-bill is 5.31%. Debtor moderated its position somewhat in its brief, however, arguing that an appropriate rate would fall in the range of -1% to +1% of prime (i.e., 6.25% to 8.25%).

CONCLUSIONS OF LAW

The Eleventh Circuit Court of Appeals resolved the precise issue raised by

the Department's objection in Matter of Southern State Motor Inns, Inc., 709 F.2d 647 (11th Cir. 1983), *cert. denied*, 465 U.S. 1022, 104 S.Ct. 1275, 79 L.Ed.2d 680 (1984). The Court characterized the "sole issue" before it in Southern State Motor Inns as concerning "the proper method for determining the rate of interest to be applied in calculating deferred payments of delinquent federal taxes pursuant to § 1129(a)(9)(C) of the Bankruptcy Code." Id. at 649. The Court concluded that the interest rate must be calculated on a competitive market basis:

The appropriate discount [interest] rate must be determined on the basis of the rate of interest which is reasonable in light of the risks involved. Thus, in determining the discount [interest] rate, the court must consider the prevailing market rate for a loan of a term equal to the payout period, with due consideration of the quality of the security and the risk of subsequent default.

Id. at 651 (*quoting* 5 Collier on Bankruptcy ¶ 1129.03, at 1129-65 (15th ed. 1982)).

The Court also made clear that the appropriate interest rate to ensure that a priority tax creditor receives the present value of its claim under section 1129(a)(9)(C) is "the current market rate without any reduction for the 'rehabilitation aspects' of the plan [of reorganization]." Id. at 652-53. Based upon this principle, at least one bankruptcy court has held that the appropriate rate to be paid a priority tax claimant under section 1129(a)(9)(C) is the rate of interest that a lender would require on a medium quality, low risk, unsecured

loan of a similar term. *See In re General Development, Corp.*, 147 B.R. 610, 618 (Bankr. S.D.Fla. 1992).

Applying these principles to the present case, it is clear that the beginning point in calculating the appropriate rate is the prime rate (7.25%), which represents the rate at which a lender would lend to its most credit-worthy customers. To bring the rate in line with what a lender would charge on a medium quality, low risk, unsecured 48-month loan, however, an additional risk premium of 1 % must be added to the prime rate. Admittedly, determination of the appropriate risk premium, as has been observed by other courts,¹ is an imprecise endeavor, nevertheless, I conclude that an interest rate of 8.25% is sufficient to yield to the Department the present value of its claim during the 48 months that Debtor will be repaying the Department's priority claim.

¹ *See e.g., General Development, Corp.*, 147 B.R. at 618.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions, IT IS THE ORDER OF THIS COURT that Debtor pay to the Georgia Department of Revenue interest at the annual rate of 8.25% on any claim that is subject to the requirements of 11 U.S.C. § 1129(a)(9)(C).

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of July, 1994.